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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,448	07/26/2001	Charles L. Wilson	0145.00	4447

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

8

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/912448

Applicant(s)

WILSON ET AL

Examiner

S. WEINSTEIN

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 6/6/03

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-20 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-20 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

Claims 1, 2, 4, 5, 10-13 and 16-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Atsumi et al(JP 200217509 Ref. N) for the reasons given in the Office Action mailed 12/04/02, Paper No. 6.

Claims 3, 6-9, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atsumi et al in view of Takahashi (6,352,727) for the reasons given in the Office action mailed December 4, 2002, Paper No. 6.

Applicants' remarks filed June 6, 2003, Paper No. 7 have been fully and carefully considered but are not found to be convincing. Contrary to what is apparently being urged, the reference does not have to read word-for-word the same as the claim for anticipation. It is urged that Atsumi does not specifically mention that his composition is an antifungal agent; only that it is an antibacterial agent. Whether the composition is an antifungal agent or not is a property or capability of that composition. Atsumi discloses a composition that is to be added to produce and contains both of applicants constituents-chitosan and hinokitiol. Applicant's specification does not disclose that the antibacterial and antifungal properties only occur in certain narrow limits. In fact, just the opposite appears to be true. Thus, in the absence of any proven criticality to the contrary, it appears that providing chitosan and hinokitiol in an anti-microbial amount also inherently has at least some degree of antifungal activity. Note that the claims are silent as to any degree of antibacterial or anti-fungal activity, and thus are readable on the most minimal degree of activity. It is noted that the amendment urges that the synergistically effective amount is a "critical" element, but, as noted above, this 'critical' amount is not disclosed, let alone claimed. On page 3 of the amendment, it is apparently urged that the amounts of the chitosan and essential

oil in the invention are different from Atsumi. It is not clear what is the source for the ranges argued. In fact, the only disclosed range in applicants' specification appears to occur on page 9, wherein it is stated that "advantageously" the essential oils and/or chitosan salts can be used in amounts ranging from about 3000 ppm to about 10 ppm based on the total weight of the food product. Atsumi discloses the weight percent based on the carrier, not on the product so that the amount of hinokitiol and chitosan based on the total weight of the food product would be smaller than those numbers quoted by applicants.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the

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organization where this application is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

S. Weinstein/dh
August 19, 2003


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
8/26/03